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Attorneys for COUNTY OF SAN MATEO and
CHRISTINA CORPUS

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

A.B.O. Comix, Kenneth Roberts, Zachary
Greenberg, Ruben Gonzalez-Magallanes,
Domingo Aguilar, Kevin Prasad, Malti Prasad,
and Wumi Oladipo,

Plaintiffs,

v.

County of San Mateo and Christina Corpus, in
her official capacity as Sheriff of San Mateo
County,

Defendants.

Case No. 3:23-cv-01865-JSC

**DEFENDANTS' ADMINISTRATIVE
MOTION FOR LEAVE TO FILE SUR-
OPPOSITION TO PLAINTIFFS'
MOTION TO REMAND;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

1 **NOTICE OF MOTION AND MOTION**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that Defendants County of San Mateo (the “County”) and
 4 Christina Corpus (collectively “Defendants”) submit the following Administrative Motion for
 5 leave to file a one-page Sur-Opposition to Plaintiffs’ Motion to Remand (Dkt. 28), in order to
 6 address the effect of changed circumstances, to wit, the County filed Counterclaims on June 23,
 7 2023, seeking, inter alia, a declaratory judgment, decreeing that the County’s mail policy does not
 8 violate or contravene the First, the Fourth Amendment or the Fourteenth Amendments.
 9 Defendants’ counsel notified Plaintiffs’ counsel by email of Defendants’ intent to file this motion
 10 and asked if Plaintiffs would so stipulate. Declaration of Chad E. DeVeaux in Support of
 11 Defendants’ Administrative Motion, Ex. A. Plaintiffs’ notified Defendants that they will not
 12 stipulate to the motion. *Id.* Attached hereto as **Exhibit 1** is Defendants’ proposed Sur-Opposition.

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 After Defendants filed their Opposition to Plaintiffs’ motion, the County filed
 15 Counterclaims seeking a declaratory judgment decreeing the mail policy does not violate the First,
 16 Fourth or Fourteenth Amendments. The County seeks such relief because Plaintiffs’ original
 17 complaint asserted First and Fourth Amendment claims and Plaintiffs have refused to dismiss
 18 those claims with prejudice, putting the County in apprehension that Plaintiffs will seek to subject
 19 it to liability on those claims. L.R. 7-3 ordinarily does not permit “additional memoranda” to be
 20 filed. But, as Judge Staton recognized, it is proper to grant parties “leave to file a [sur-response]”
 21 regarding a motion “to address [a] change in circumstance” effecting that motion. *STM Atl. N.V. v.*
 22 *Dong Yin Dev. Holdings Ltd.*, 2019 WL 2417625, at *3 n.1 (C.D. Cal. Feb. 15, 2019). Defendants
 23 believe that the federal Counterclaims constitutes such a “change in circumstance.”

24 DATED: June 26, 2023

Respectfully submitted,

25 BARTKO ZANKEL BUNZEL & MILLER

26 By: /s/ Chad E. DeVeaux

CHAD E. DEVEAUX

27 Attorneys for Defendants
 28 COUNTY OF SAN MATEO and
 CHRISTINA CORPUS

EXHIBIT 1

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**DEFENDANTS' PROPOSED SUR-
OPPOSITION TO PLAINTIFFS'
MOTION TO REMAND**

DEFENDANTS' PROPOSED SUR-OPPOSITION

The County filed their federal Counterclaims because Plaintiffs' refusal to dismiss their federal claims with prejudice and their evasive explanations for not doing so has caused Defendants to be gravely concerned Plaintiffs will revive their federal claims at the eleventh hour.

Filing Counterclaims asserting federal claims does not create federal question jurisdiction. But federal question jurisdiction independently exists here because such jurisdiction is established "on the basis of the pleadings on file at the time of removal." *Millar v. BART Dist.*, 236 F. Supp. 2d 1110, 1116 (N.D. Cal. 2002). As such, "if a case was properly removed, a plaintiff cannot thereafter oust the federal court of jurisdiction by unilaterally changing the case so as to destroy the ground upon which removal was based." *Id.* Thus, "[w]hen a plaintiff amends a complaint to eliminate the federal question upon which proper removal was based," the Court has substantial discretion that it should exercise based on the circumstances of the case. *Hodges v. In Shape Health Clubs, LLC*, 2017 WL 4386052, at *2 (E.D. Cal. Oct. 2, 2017).

The Counterclaims constitute an additional circumstance that favors retaining the case. The fact that a defendant has filed a Counterclaim raising federal questions after a plaintiff "dismiss[ed] [its own] federal ... claim" is a circumstance supporting the exercise of discretion to "retain pendant jurisdiction over [the plaintiff's] ... state-law claims" because litigating the plaintiffs' claims in state court and the defendant's claims in federal court "would be an extremely inefficient use of judicial resources." *Ampleman v. Trans States Airlines, Inc.*, 204 F.R.D. 437, 439 (D. Mo. 2001). In the alternative, the Court could sever the County's federal claims and retain jurisdiction over those claims and remand Plaintiffs' state law claims. This would ensure Defendants' right to have its federal constitutional rights judged by an Article III court.

DATED: June 26, 2023

Respectfully submitted,

BARTKO ZANKEL BUNZEL & MILLER

By: /s/ Chad E. DeVeaux

CHAD E. DEVEAUX

Attorneys for Defendants
COUNTY OF SAN MATEO and
CHRISTINA CORPUS